IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1011 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ABASMIYA MAHOMADMIYA SHAIKH - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR JV JAPEE for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR SA DESAI for Respondent(s) : 2,
MR H AHMED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/03/2007

ORAL JUDGMENT

1.0 By way of this petition, the petitioner has prayed to quash and set aside the impugned order passed by the learned J.M.F.C., Modasa below Exhibit 72 in Criminal Case No. 1657 of 1999 as well as the order of the learned Additional Sessions Judge, Sabarkantha at Himmatnagar passed in Criminal Revision Application No. 69 of 2005.

2.0 The brief facts of the case are that a complaint being I-C.R. No.51 of 1999 came to be

registered with Modasa Town Police Station against the petitioner and his family members by his daughter-in-law-respondent No.2 for the offences punishable under Section 498-A, 322, 504, 506(2) and 114 of the Indian Penal Code. In pursuance to that the petitioner and his family members came to be arrested. Therefore, they applied for the bail and were accordingly released on bail vide order dated 09.07.1999 passed by the learned Judicial Magistrate First Class, Modasa.

2.1 Thereafter, on 10.03.2005 the respondent No.2- original complainant filed another complaint vide II-C.R. No. 76 of 2005 with Modasa Town Police Station against the petitioner and one of his son alleging that the petitioner and his son had come to her house and had beaten her up so as to compel her to arrive at a settlement and withdraw the cases. Pursuant to the registration of the said complaint, the petitioner was released on bail by the learned J.M.F.C., Modasa. Being aggrieved by the same,

the complainant preferred an application Exhibit 72 seeking cancellation of bail. The learned J.M.F.C., Modasa allowed the said application vide order dated 04.07.2005.

2.2 Against the said order, the petitioner preferred revision application before the Sessions Court, Sabarkantha at Himmatnagar. The said application was dismissed by the learned Additional Sessions Judge vide judgment and order dated 27.07.2005. Hence, the present application.

3.0 While issuing Notice on 02.08.2005 this Court has passed the following order;

> 1. “Leave to join the original complainant as party respondent.
> 2. Mr.Japee, Ld.advocate for the petitioner states that the petitioner is ready to pay Rs.5,000/- towards the costs of litigation to the original complainant and the petitioner is also ready to abide by any conditions which may be imposed by this court for continuing the petitioner on bail.
> 3. In view of the above, notice returnable on 12.8.05. Mr.Kogje, Ld.APP waives service of notice on behalf of respondent State.

4.By ad interim order, it is directed that the operation of the order passed by the Ld.Magistrate for cancellation of bail shall remain stayed on condition that the petitioner deposits Rs.5,000/- on or before 11.8.05 and does not enter the limits of Modasa Town Police Station.

5.DS permitted".

3.1 Thus, by the aforesaid order, the impugned order passed by the learned J.M.F.C., Modasa canceling the bail granted to the petitioner was never permitted to come into operation. Thereafter, the matter was listed from time to time before this Court. On 04.10.2005, following order was passed;

"This Court has passed an order on 2.8.2005 issuing notice on respondent No.2. The Court has also directed to deposit a sum of Rs.5,000/- towards the cost of litigation. The petitioner has already deposited the said amount. However, notice issued by this Court has been refused by the respondent No.2. The Court has also granted interim relief to the effect that the operation of the order passed by the learned Magistrate for cancellation of bail remains stayed on condition that the petitioner shall deposit a sum of Rs.5,000/- on or before 11.8.2005 and does not enter the limits of Modasa Town Police Station. First

> condition has already been satisfied by the petitioner. So far as the second condition is concerned, despite notice being issued the same was refused by the respondent No.2 and respondent No.2 has not accepted the notice. It, therefore, appears that the matter requires to be admitted. Accordingly it is admitted and rule be issued. However, looking to the old age and ill health of the petitoner the Condition imposed by this Court is modified to the extent that the petitioner shall enter the limits of Modasa Town Police Station but shall not enter the limit of two kilometers from the residence of respondent No.2. Rule returnable on 19.10.2005. Direct service is permitted".

3.2 Heard learned Counsel for the parties. From the record it appears that the service of Notice was refused by respondent No. 2. Hence, it appears that respondent No. 2 is not interested in the present proceedings. By passing order dated 04.10.2005 this Court has permitted the petitioner to enter the limits of Modasa Town Police Station but, not within the limits of two kilometers from the residence of respondent No.2 – original complainant. In view of the fact that the petitioner is aged about 70 years, suffering of heart ailment, having high blood pressure, no prejudice would be caused to respondent No.2 if

the aforesaid arrangement is continued.

3.3 Considering the facts of the case and looking to the old age and ill-health of the petitioner, in the interest of justice, it would be appropriate that the interim arrangement as directed by this Court vide order dated 04.10.2005 is continued till the final disposal of the cases pending before the trial Court.

4.0 Hence, the petition is partly allowed. It is directed that the interim arrangement made by this Court vide order dated 04.10.2005 shall continued till the final disposal of the cases registered against the petitioner and pending before the trial Court. Rule is made absolute to the aforesaid extent.

(K. S. JHAVERI, J.)

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